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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,672	04/16/2004	Richard F. Gladney	SMCY-P02-085	9591
7590 12/29/2005			EXAMINER	
ROPES & GRAY LLP EDWARD J. KELLY ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SANTOS, ROBERT G	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 12/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,672

Applicant(s)

GLADNEY, RICHARD F.

Examiner

Robert G. Santos

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/18/05, 7/21/05, 9/06/05 & on 11/23/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>07182005, 07212005 & 09062005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198. As concerns claims 1-3 and 8-20, Broyles '729 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (2-5) with a pattern integrally formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (f) which also includes a pattern. Poole '198 provides the basic teaching of a plurality of frame units (10, 20, 30, 40) each including a pattern (54, 56, 59) attached thereto, wherein the patterns "may be colored plastic or wood, or have relief motifs or designs on them, or could be of upholstered design" (as described in page 2, lines 6-9). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Broyles '729 with a mattress foundation comprising at least one sidewall outer surface and at least one ground support member each having a pattern integrally formed thereon in order to impart a finished appearance to the mattress assembly as desired.

With regards to claim 7, Broyles '729 is considered to show a condition wherein a pattern (12) is formed on at least a portion of the upper side of the top surface (1) of the mattress foundation (C) in Figure 1 and in column 2, lines 58-62.

Art Unit: 3673

3. Claims 1-3, 8-14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Propst '952 in view of Poole '198. Propst '952 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (7) with a pattern integrally formed thereon which is substantially planar or three-dimensional, as well as the use of at least one ground support member (W) which also includes a pattern. Poole '198 provides the basic teaching of a plurality of frame units (10, 20, 30, 40) each including a pattern (54, 56, 59) attached thereto, wherein the patterns "may be colored plastic or wood, or have relief motifs or designs on them, or could be of upholstered design" (as described in page 2, lines 6-9). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Propst '952 with a mattress foundation comprising at least one sidewall outer surface and at least one ground support member each having a pattern integrally formed thereon in order to impart a finished appearance to the assembly as desired.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198, and further in view of Saputo '946. Broyles '729, as modified by Poole '198, does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation. Saputo '946 provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198, with a headboard tangentially extending vertically along one end of the foundation in order to impart a more finished appearance thereto.

Art Unit: 3673

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 as applied to claim 4 above, and further in view of Bellows et al. '191. Broyles '729, as modified by Poole '198 and as further modified by Saputo '946, does not specifically disclose a condition wherein the headboard is constructed substantially of plastic material. Bellows et al. '191 provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and lightweight as taught by Bellows et al. '191, thereby also facilitating attachment to a mattress foundation.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 and Bellows et al. '191 as applied to claim 5 above, and further in view of Wallace et al. '537. Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, does not specifically disclose a condition wherein an outer surface of the headboard includes a pattern. Wallace et al. '537 provide the basic teaching of a headboard (12) provided with a pattern (21) on its outer surface (18). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, with a headboard having an outer surface

Art Unit: 3673

including a pattern in order to “enhance the attractiveness and beauty of the structure” as desired (see Wallace et al. ‘537, column 1, lines 3-9).

Response to Amendment

Applicant’s arguments on page 6 of his amendment stating that Poole ‘198 does not teach the use of a mattress assembly made of plastic material and that Broyles ‘729 does not disclose the use of a sidewall pattern are of no consequence as these arguments attack the references individually. Where the rejection is a combination of references, Applicant(s) cannot show unobviousness by so attacking the references. *In re Young et al.*, 56 CCPA 757, 403 F.2d 754, 159 USPQ 725. The examiner respectfully maintains that Broyles ‘729 provides the basic teaching of a mattress assembly constructed of plastic material (as described in column 2, lines 29-31) whereas the Poole ‘198 reference is used to teach the use of a mattress assembly including a sidewall (54, 56, 59) having a pattern (as described on page 2, lines 4-8). Furthermore, the examiner respectfully disagrees with Applicant’s argument on page 6 of his amendment stating that neither Poole ‘198 nor Broyles ‘729 disclose the use of a frame assembly comprising a plurality of ground support members, since the examiner respectfully maintains that the opposing sides and ends of element *f* of the mattress assembly of Broyles ‘729 may reasonably be considered as being a plurality of ground support members as broadly recited in Applicant’s claims. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974).

In response to Applicant’s arguments on pages 7 and 8 of his amendment stating that there is no suggestion to combine the Poole ‘198 and Broyles ‘729 references as well as to

Art Unit: 3673

combine Poole '198 and Propst '952, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, although the motivations to make the modifications which were stated in the Office action were not expressly articulated within the references, one of ordinary skill in the art would still have found it obvious at the time the invention was made to combine the references simply due to the advantageous effects achieved by combining the structural elements inherent to the devices disclosed in the references. Thus it is believed that the examiner has provided a *prima facie* case of obviousness absent the use of impermissible hindsight.

Lastly, in response to Applicant's additional arguments on pages 7 and 8 of his amendment concerning the Propst '952 and Poole '198 references, the examiner respectfully disagrees, and reasserts that Poole '198 provides the basic teaching of a mattress assembly including a sidewall (54, 56, 59) having a pattern integrally formed thereon (as described on page 2, lines 4-8), while Propst '952 teaches the use of a mattress assembly constructed substantially of plastic material (as described in column 3, lines 8-17) comprising a frame assembly including a plurality of ground support members (W), a generally planar and essentially rigid top surface (6) having an upper side and lower side, at least one essentially rigid

Art Unit: 3673

sidewall (7), and a cavity (as described in column 5, lines 7-9). The examiner respectfully asserts that the mattress assembly (C) of Propst '952 could also still be defined by the label "mattress foundation" as recited in Applicant's claims since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hooper, Jr. '199, Hofmann '478 and Hooper, Jr. '275.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Suzanne L. Barrett can be reached on (571) 272-7053. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
December 12, 2005